

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:15-CV-00038-F

COMERICA BANK,)
)
Plaintiff,)
)
v.)
)
D'BEEFS, LLC; 7 BY 34, LLC; ERICA)
R. LICARDO; and MAURICE GRUNWITZ,)
LICARDO,)
)
Defendants.)

ORDER

This matter is before the court on Plaintiff Comerica Bank's ("Comerica") Second Amended Motion for Default Judgment and Attorney's Fees [DE-18]. Comerica brings this motion only as to Defendants D'Beefs, LLC, and 7 by 34, LLC, because of bankruptcy proceedings initiated by the individual defendants. However, it appears to the court that the automatic stay as to Maurice Grunwitz Licardo should be lifted due to his discharge under 11 U.S.C. § 727. *See* Discharge of Debtor, *In re Licardo*, No. 15-3222-5-DMW (Bankr. E.D.N.C. September 23, 2015) (Docket Entry 14); *see also* 11 U.S.C. § 362 (c)(2)(C) ("[T]he stay of any other action under subsection (a) of this section continues until the earliest of . . . if the case is a case . . . under chapter [11] of this title, the time a discharged is granted or denied . . ."). Therefore, the automatic stay is LIFTED as to Defendant Maurice Licardo.

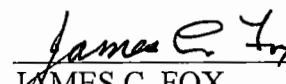
Additionally, an issue not addressed by Comerica's motion is whether allowing the motion for default judgment is appropriate in light of the Fourth Circuit's interpretation of *Frow v. De La Vega*, 82 U.S. (15 Wall.) 552, 21 L.Ed. 60 (1872), and the application of Rule 54 of the

Federal Rules of Civil Procedure. *See, e.g., United States ex rel. Hudson v. Peerless Ins. Co.*, 374 F.2d 942, 945 (4th Cir. 1967). Accordingly, Comerica is DIRECTED to file supplemental briefing within 30 days of the filing date of this order explaining why allowing the motion for default judgment is appropriate in light of the Fourth Circuit's application of *Frow*. Alternatively, if Plaintiff determines that the Fourth Circuit's interpretation of *Frow* should preclude the entry of default judgment against the non-answering defendants, it should file a notice so stating within 30 days.

For the foregoing reasons, Comerica's Second Amended Motion for Default Judgment and Attorney's Fees [DE-18] is DENIED WITHOUT PREJUDICE.

SO ORDERED.

This, the 21st day of October, 2015.



JAMES C. FOX
Senior United States District Judge